

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Modernizing the E-rate)	WC Docket No. 13-184
Program for Schools and Libraries)	

**REPLY COMENTS OF
NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (NCTA) submits these reply comments in response to petitions filed by Boulder Valley School District and the Samuelson-Glushko Technology Law & Policy Clinic (Boulder Valley),¹ and Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation, Charlotte County Public Schools, Halifax County Public Schools, GCR Company, and Kinex Telecom (Microsoft).² Both petitions seek to expand broadband connectivity funded by the universal service schools and libraries support mechanism (the E-rate program) to serve residential locations outside of school grounds. While the petitions’ stated reasoning for the filings is understandable (i.e., to close the “homework gap” for students), the initial comments regarding the petitions identify many issues that the Commission must address before it acts on them. In particular, the Commission must ensure that granting the

¹ Petition for Waiver on behalf of Boulder Valley School District, Samuelson-Glushko Technology Lay & Policy Clinic (TLPC), WC Docket Nos. 13-184 and 10-90 (May 16, 2016) (Boulder Valley Petition).

² Joint Petition for Clarification, or, in the Alternative, Waiver of Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation, Charlotte County Public Schools, Halifax County Public Schools, GCR Company, and Kinex Telecom, WC Docket No. 13-184 (June 7, 2016) (Microsoft Petition).

petitions will not have negative unintended consequences for the E-rate program and for other federal and private efforts to expand broadband in unserved and underserved areas.

I. IT IS UNCLEAR HOW THE PETITIONERS WOULD COMPORT WITH STATUTORY REQUIREMENTS

As several commenters point out, section 254(h)(1)(B) of the Communications Act, as amended, (the Act), limits the entities that can receive discounted services subsidized by E-rate support “to elementary schools, secondary schools, and libraries.”³ Both the Boulder Valley and Microsoft Petitions seek permission to extend school districts’ E-rate-supported networks outside of these stated beneficiaries without accounting for the additional costs these extensions may entail. As a result, E-rate-supported services would be provided to entities other than those specifically listed in the statute.

In addition, the statute also limits the purpose for which eligible entities can use support by requiring that E-rate-supported service be provided to schools and libraries “for educational purposes.”⁴ Although the petitioners assert that their primary motivation is to provide students with broadband access at home,⁵ it is unclear that the petitioners and the Commission will be able to ensure that E-rate-supported broadband will only be used for the purposes the statute intended, and not for non-educational purposes within private residences.⁶

³ 47 U.S.C. §254(h)(1)(B); Comments of ITTA – The Voice of Mid-Size Communications Companies, CC Docket No. 02-6, WC Docket Nos. 10-90 and 13-184, at 1-2 (Nov. 3, 2016) (ITTA Comments); Comments of NTCA The Rural Broadband Association, WC Docket Nos. 10-90 and 13-184, CC Docket No. 02-6, at 7-8 (Nov. 3, 2016) (NTCA Comments); Comments of the United States Telecom Association, CC Docket No. 02-6, WC Docket Nos. 10-90 and 13-184, at 2-5 (Nov. 3, 2016) (USTelecom Comments); Comments of WTA – Advocates for Rural Broadband, CC Docket No. 02-6, WC Docket Nos. 10-90 and 13-184, at 6 (Nov. 3, 2016) (WTA Comments).

⁴ 47 U.S.C. §254(h)(1)(B).

⁵ Boulder Valley Petition at 1; Microsoft Petition at 7.

⁶ ITTA Comments at 12-13; NTCA Comments at 7-10; USTelecom Comments at 5-6; WTA Comments at 4-6.

Commenters also raise legitimate questions about how the school districts in the Boulder Valley and Microsoft Petitions will be able to certify compliance with the Children’s Internet Protection Act (CIPA) when E-rate-supported services are used off campus.⁷ Under the statute, schools have specific obligations regarding Internet access, including filtering content that is obscene or harmful to minors.⁸ Although the Microsoft Petition mentions the obligation of its school districts to perform CIPA filtering,⁹ the Boulder Valley Petition does not discuss how school districts subject to its waiver request would comply with CIPA.¹⁰ The Commission must obtain a clearer understanding of how the CIPA requirements will be met before acting on the petitions.

Finally, the Commission must make clear that school districts cannot profit from expanding E-rate-funded networks to residences. Section 254(h)(3) of the Act states that “[t]elecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.”¹¹ Although both petitions assert that the proposals will not impose additional costs on the E-rate program, it is not clear that school districts would be prohibited from charging for the extended capacity outside of school grounds.

⁷ 47 U.S.C. §254(h)(5); ITTA Comments at 13; USTelecom Comments at 11-14.

⁸ 47 U.S.C. §254(h)(5).

⁹ Microsoft Petition at 10.

¹⁰ Boulder Valley Petition.

¹¹ 47 U.S.C. §254(h)(3).

II. THE COMMISSION MUST ENSURE THAT THE E-RATE PROGRAM AND ITS PARTICIPANTS ARE NOT HARMED BY GRANTING THE PETITIONS

As noted above, both the Boulder Valley and Microsoft Petitions claim that their proposals will impose no additional costs on the E-rate program.¹² Before granting any requested waiver to allow these projects to move forward, the Commission must conclusively determine that these assertions are correct. As the Commission has noted, demand for E-rate support has exceeded available funds in nearly every year that the program has been in existence.¹³ The Commission should not allow E-rate funding to be directed to off-campus uses when the demand for on-campus educational E-rate support is so great.

However, should the Commission decide to grant the petitioners' requests, the Commission should take the following steps to ensure that the E-rate program and its participants are not harmed by granting the petitions. First, the Commission must confirm that the school districts are not using more E-rate funding than is necessary to serve the on-campus needs of students. As USTelecom points out, grant of these petitions could lead to school districts requesting excessive and unnecessary additional or higher-capacity E-rate services as they seek to expand their networks into the community.¹⁴ Therefore, prior to granting these or any similar petitions, the Commission should establish a process for school districts to document their past E-rate purchases over a set period of time and explain any increased funding requests that coincide with a request for off-campus use.

Second, to verify claims that the additional off-campus residential use will not burden the E-rate program, the Commission must require school districts to measure the additional usage

¹² Boulder Valley Petition at 2-4; Microsoft Petition at 13.

¹³ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8878, ¶16 (2014).

¹⁴ USTelecom Comments at 15-16.

when the E-rate-supported networks are extended outside of school grounds. The school districts should publicly report this usage on an annual basis.

Absent such safeguards, grant of these and similar petitions could overburden the E-rate program and preclude support from going to other schools and libraries where the funding would be used for the limited purposes that the statute intended.

III. THE COMMISSION MUST ENSURE THAT GRANT OF THE PETITIONS DOES NOT HARM OTHER EFFORTS TO EXPAND BROADBAND

Before acting on the petitions, the Commission must consider the effect granting the petitions could have on existing universal service programs, as well as on private efforts to provide broadband in unserved and underserved areas.

As many commenters stated, the Commission recently reformed its universal service programs so that they better address the issues of broadband availability and affordability raised in the petitions.¹⁵ Broadband availability is addressed through the universal service high-cost programs, and affordability is addressed through the Lifeline program. With regard to availability, to the extent the areas at issue in the petition are unserved, the Commission should examine targeting funding to these areas through the high-cost Connect America Fund, or the upcoming implementation of the high-cost Remote Areas Fund. Affordability issues can be addressed through the Commission's Lifeline program, which was recently reformed to provide support for voice and broadband services. Repurposing the E-rate program to address these issues beyond its purview could lead to over-funding in some areas, and put additional stress on demand for funds for schools and libraries.

¹⁵ ITTA Comments at 5-9; NTCA Comments at 5-7; USTelecom Comments at 18-19; WTA Comments at 9-10.

In addition, the Commission must take care that the petitions do not thwart the efforts of private companies to deploy additional affordable broadband services. As USTelecom stated, “Providing universal service support through the E-Rate program to school entities seeking to monetize that capacity in competition with non-subsidized, private broadband service providers could have the unintended consequence of crowding out private investment, thus harming competitive dynamics to the detriment of those communities who would become more dependent on government subsidized networks.”¹⁶ To this end, the Commission should limit any relief granted to these or similar petitions to only areas that are not served by any existing broadband providers, i.e., unserved areas.¹⁷

IV. THE PETITIONS SHOULD BE TREATED LIKE WAIVER REQUESTS THAT, IF GRANTED, SHOULD APPLY SOLELY TO THE REQUESTING ENTITIES FOR A LIMITED PERIOD OF TIME

The Microsoft Petition is styled as a petition for clarification, or, in the alternative, a petition for waiver.¹⁸ The petition seeks relief from existing requirements, such as the Commission’s cost allocation rules, and the Eligible Services List prohibition against using E-rate funding for off-campus purposes. Therefore the petition should be treated as a petition for waiver, and not as a mere petition for clarification.

In addition, due to the many issues raised by the petitions, the Commission should limit its analysis to the two petitions currently before it rather than granting a blanket waiver to apply more broadly. While we do not believe the Commission should grant these petitions until it addresses the issues raised above, if the Commission were to grant any of the petitions such grant

¹⁶ USTelecom Comments at 20.

¹⁷ Comments of Sprint Corporation, WC Docket Nos. 10-90 and 13-184, CC Docket No. 02-6, at 3 (Nov. 3, 2016); USTelecom Comments at 20; Comments of the Wireless Internet Service Providers Association, CC Docket No. 02-6, WC Docket Nos. 10-90 and 13-184, at 3 (Nov. 3, 2016).

¹⁸ Microsoft Petition at 4.

should be limited to a finite time period, after which the Commission should reexamine the need for and merit of the petitions.

CONCLUSION

As explained above, there remain many important issues that the Commission must address before it considers acting on the Boulder Valley and Microsoft petitions.

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen
Steven F. Morris
Jennifer K. McKee
NCTA – The Internet & Television
Association
25 Massachusetts Avenue, NW – Suite 100
Washington, D.C. 20001-1431

December 5, 2016